

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DEFENDERS OF WILDLIFE, *et al.*,

Plaintiffs,

v.

KEN SALAZAR, Secretary of the
United States Department of
the Interior, *et. al.*,

Defendants,

v.

IDAHO STATE SNOWMOBILE
ASSOCIATION; PRIEST LAKE
TRAILS/OUTDOOR RECREATION
ASSOCIATION; WINTER RIDERS,
INC, an Idaho Corporation
a/k/a SANDPOINT WINTER
RIDERS; PRIEST LAKE CHAMBER
OF COMMERCE; THE AMERICAN
COUNCIL OF SNOWMOBILE
ASSOCIATIONS; and THE
BLUERIBBON COALITION,

Defendant-Intervenors.

NO. CV-09-15-EFS

**ORDER ACCEPTING SETTLEMENT
AGREEMENT AND DISMISSING
ACTION WITH PREJUDICE**

Before the Court is Plaintiffs and Defendants' Stipulated Settlement Agreement (Ct. Rec. [23](#)), filed May 29, 2009. Based on the Stipulation,

IT IS HEREBY ORDERED:

1 1. Defendants shall permit Plaintiffs to supplement their Petition
2 for Defendants to Designate Critical Habitat for the Woodland Caribou by
3 submitting to Defendants any additional information and data on or before
4 120 days from the date of this Order.

5 2. Defendants shall make a determination as to whether critical
6 habitat for the Selkirk Mountains population of Woodland Caribou is
7 prudent no later than November 20, 2011, after considering any
8 supplemental information provided by Plaintiffs in accordance with
9 Paragraph 1. If Defendants determine that critical habitat designation
10 is prudent, then they shall submit a proposed critical habitat rule to
11 the *Federal Register* on or before November 20, 2011.

12 3. If Defendants determine that the designation of critical habitat
13 is prudent, then they shall submit to the *Federal Register* a final
14 critical habitat determination by November 20, 2012.

15 4. Defendants are only ordered to take actions by the deadlines
16 specified in Paragraphs 2 and 3; this Order does not limit Defendants'
17 authority with regard to the substantive outcome of any determinations.
18 To challenge any final determination issued in accordance with this
19 Agreement, Plaintiffs will be required to file a separate action.
20 Plaintiffs have not waived their ability to challenge substantive
21 decisions made by Defendants pursuant to Paragraphs 2 and 3, above, and
22 Defendants have not waived any applicable defenses.

23 5. This Order may be modified 1) by the Court upon good cause shown,
24 2) consistent with the Federal Rules of Civil Procedure, 3) by written
25 stipulation between the parties filed with and approved by the Court, or
26 4) upon written motion filed by one of the parties and granted by the
Court. In the event that either party seeks to modify this Order,

1 including the deadline for the actions specified in Paragraphs 2 or 3,
2 or in the event of a dispute arising out of or relating to this Order,
3 or in the event that either party believes that the other party has
4 failed to comply with any term or condition of this Order, the party
5 seeking the modification, raising the dispute, or seeking enforcement
6 shall provide the other party with notice of the claim. The parties will
7 meet and confer (in-person not required) at the earliest possible time
8 in a good-faith effort to resolve the claim before pursuing relief from
9 the Court. If the parties are unable to resolve the claim after meeting
10 and conferring, either party may pursue relief from the Court.

11 6. No party shall use this Order or the terms herein as evidence of
12 what does or does not constitute lawful designation of critical habitat,
13 or a lawful timetable therefor, in any other proceeding involving
14 Defendants' implementation of the Endangered Species Act ("ESA") or any
15 other statute.

16 7. Defendants shall pay Plaintiffs' reasonable attorneys' fees and
17 costs under the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A),
18 in the amount settled upon by the parties. Pursuant to the parties'
19 agreement, Defendants shall pay Plaintiffs a total of \$5,500.00.
20 Defendants shall make electronic payment to Plaintiffs' undersigned
21 counsel, Defenders of Wildlife, in accordance with OMB Form 1510 as
22 completed by Plaintiffs.

23 8. Defendants shall submit all necessary paperwork for the
24 processing of the attorneys' fee award to the relevant government account
25 officials within thirty (30) days of receipt of OMB Form 1510 from the
26 Plaintiffs.

1 9. Payment by Defendants of \$5,500.00 shall fully satisfy any and
2 all claims for attorneys' fees and costs of litigation to which
3 Plaintiffs are entitled in the above-captioned litigation, up to and
4 including the date of this Order. Receipt of this payment from
5 Defendants shall operate as a release of Plaintiffs' claims for
6 attorneys' fees and costs in this matter, through and including the date
7 of this Order.

8 10. Plaintiffs retain the right to seek additional fees and costs
9 incurred subsequent to this Order arising from a need to enforce or
10 defend against efforts to modify the underlying schedule outlined in
11 paragraphs 1-3, or for any other unforeseen continuation of this action.
12 Defendants do not waive any right to contest fees claimed by Plaintiffs
13 or Plaintiffs' counsel, including the hourly rate, in any future
14 litigation, or continuation of the present action. Further, this Order
15 as to attorneys' fees and costs has no precedential value and shall not
16 be used as evidence in any other attorneys' fees litigation.

17 11. No provision of this Order shall be interpreted as, or
18 constitute, a commitment or requirement that Defendants take action in
19 contravention of the ESA, the Administrative Procedure Act ("APA"), or
20 any other law or regulation, either substantive or procedural. Nothing
21 in this Order shall be construed to limit or modify the discretion
22 accorded to Defendants by the ESA, the APA, or general principles of
23 administrative law with respect to the procedures to be followed in
24 making any determination required herein, or as to the substance of any
25 final determination.

26 12. No provision of this Order shall be interpreted as, or shall
constitute, a requirement that Defendants are obligated to pay any funds

1 exceeding those available, or take any action in contravention of the
2 Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable
3 appropriations law.

4 13. Plaintiffs' Complaint (**Ct. Rec. 1**) is **DISMISSED** in its entirety
5 with prejudice under Rule 41(a)(1). Notwithstanding this action's
6 dismissal, the Court retains jurisdiction to oversee compliance with this
7 Order's terms and to resolve any motions to modify such terms, until
8 Defendants satisfy their obligations under this Order. *See Kokkonen v.*
9 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

10 **IT IS SO ORDERED.** The District Court Executive is directed to:

- 11 1) enter this Order;
12 2) distribute copies to counsel;
13 3) deny all pending motions as moot;
14 4) strike all trial and hearing dates; and
15 5) close the file.

16 **DATED** this 1st day of June 2009.

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18 S/ Edward F. Shea
19 EDWARD F. SHEA
United States District Judge

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